

MAY 14 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAQUEL SALAZAR SALAZAR, aka Don
Alberto, aka Don Roberto,

Defendant - Appellant.

No. 02-10145

D.C. No. CR-00-00184-HG

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS MARTIN REYES-MOJARDIN,

Defendant - Appellant.

No. 02-10185

D.C. No. CR-00-00184-HG

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MIGUEL GAYTAN-PEREZ,

Defendant - Appellant.

No. 02-10391

D.C. No. CR-00-00184-HG

Appeal from the United States District Court
for the District of Hawaii
Helen Gillmor, District Judge, Presiding

Argued and Submitted May 5, 2003
Honolulu, Hawaii

Before: GOODWIN, RYMER, and T.G. NELSON, Circuit Judges.

Defendants Raquel Salazar-Salazar, Jesus Mojardin, and Miguel Gaytan-Perez raise seven distinct issues on appeal. Although we consolidated the appeals for the purpose of oral argument, we now consider each appeal separately.

I. Raquel Salazar-Salazar

Salazar-Salazar assigns error to the admission of his 1985 conviction for conspiracy. The court did not abuse its discretion when it admitted a ‘sanitized’ version of the conviction under Federal Rule of Evidence 609(b). Nor did the district court abuse its discretion by admitting an out-of-court statement made by

Mojardin to a government agent. Salazar's counsel "opened the door" to the entire statement by referencing particular portions of it during cross examination.

Finally, Salazar-Salazar assigns error to the denial of his motion to transfer venue.

Again, the court did not abuse its discretion. We affirm the judgment.

II. Jesus Mojardin

During Mojardin's sentencing hearing, the district court ruled that he was ineligible for a "safety valve" reduction pursuant to U.S.S.G. § 5C1.2. Under any quantum of evidence standard, the evidence proved that Mojardin carried a firearm in connection with the underlying offense. Mojardin also assigns error to the district court's ruling that he was ineligible for a sentence reduction under U.S.S.G. § 3B1.2 because his role in the underlying conspiracy was not "minor." The evidence that he was an enforcer-collector for the conspiracy justified the trial court's ruling. We affirm Mojardin's conviction and sentence as calculated by the district court.

III. Miguel Gaytan-Perez

Gaytan-Perez assigns error to the district court's denial of his motion to withdraw his guilty plea. Because the court sufficiently established that Gaytan-Perez knowingly and voluntarily entered his guilty plea, it did not abuse its discretion by denying his subsequent withdrawal motion. We decline to consider

Gaytan-Perez's argument that the Government breached its plea agreement by failing to seek cooperation from him. Defense counsel failed to raise this issue during the sentencing hearing, and therefore has waived it. We affirm Gaytan-Perez's conviction and sentence as calculated by the district court.

AFFIRMED.